

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Applicant: ProCyte Corporation

Attorney Docket No. PRCO223444

Serial No.: 76/076,117

Trademark Attorney: Barney Charlon

Filed: June 23, 2000

Law Office: 105

Mark: VITAL COPPER

COPY

NOTICE OF APPEAL TO THE
TRADEMARK TRIAL AND APPEAL BOARD

Seattle, Washington 98101

May 9, 2002

TO THE COMMISSIONER FOR TRADEMARKS:

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examiner refusing registration. The required fee of \$100.00 (\$100.00 per class) is submitted herewith by our check No. 138457. Please charge any additional fees or credit any overpayment to Deposit Account No. 03-1740. A copy of this notice is enclosed.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

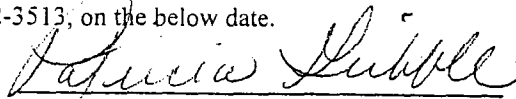


Faye L. Tomlinson
Direct Dial No. 206.695.1717

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513, on the below date.

Date:

May 9, 2002



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File No.: PRCO23444

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Applicant: ProCytte Corporation

Mark: VITAL COPPER

Int'l Class(es): 5

Date: 5/9/02

Serial No.: 76/076,117

The following have been received in the U.S. Patent and Trademark Office on the date stamped hereon via first-class mail, with a signed Certificate of Mailing:

Amendment and Request for Reconsideration (2 pages)

Copy of Amendment to Allege Use (2 pages)

Specimen (1 page)

Copy of Notice of Appeal (1 page)



05-13-2002

U.S. Patent & TMO/OTM Mail Rpt Dt #76

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: ProCyte Corporation

Attorney Docket No. PRCO223444

Serial No.: 76/076,117

Examining Attorney: Barney Charlon

Filed: June 23, 2000

Law Office: 105

Mark: VITAL COPPER

International Class: 5

DECLARATION OF FAYE L. TOMLINSON

TO THE COMMISSIONER FOR TRADEMARKS:

I, Faye L. Tomlinson, declare that I am an attorney with the firm of Christensen O'Connor Johnson Kindness^{PLLC}, attorneys of record for the above-identified application, and make the following statements:

1. On May 9, 2002, with the assistance of my secretary Patricia Gribble, I signed and mailed an Amendment and Request for Reconsideration to the Commissioner for Trademarks. Enclosed is a copy of the Amendment and Request for Reconsideration as filed.
2. Ms. Gribble, my secretary, signed the Certificate of Mailing, prepared a return receipt postcard, and arranged for the document to be deposited with the U.S. Postal Service.
3. The return receipt postcard was returned to our office on May 24, 2002, with an acknowledgment of receipt by the U.S. Patent & Trademark Office. Enclosed is a photocopy of the return receipt postcard.

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LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements being made on information and belief are believed to be true.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Faye L. Tomlinson
Direct Dial No. 206.695.1717

FLT:GLS

Enclosures:

Amendment and Request for Reconsideration (Copy)
Return Receipt Postcard (Copy)

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

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BOX RESPONSES - NO FEE

Trademark Law Office: 105

Serial No.: 76/076,117

Mark: VITAL COPPER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: ProCyte Corporation

Attorney Docket No. PRCO223444

Serial No.: 76/076,117

Trademark Attorney: Barney Charlon

Filed: June 23, 2000

Law Office: 105

Mark: VITAL COPPER

International Class: 5

AMENDMENT AND REQUEST FOR RECONSIDERATION

Seattle, Washington 98101

May 9, 2002

TO THE COMMISSIONER FOR TRADEMARKS:

AMENDMENT

On November 9, 2001, the Trademark Examiner issued a final Office Action in conjunction with prosecution of the above-identified trademark application. In the Office Action, the Trademark Examiner made final his refusal that the mark VITAL COPPER is merely descriptive as applied to the goods. Based on the Trademark Examiner's determination that the mark is descriptive, applicant respectfully requests that the original application be amended to seek registration on the Supplemental Register. Enclosed with this Amendment and Request for Reconsideration, please find a copy of applicant's Amendment to Allege Use filed May 8, 2002 evidencing that use of the mark has begun.

REQUEST FOR RECONSIDERATION

Based on the foregoing Amendment, applicant respectfully requests that the Trademark Examiner act on applicant's request to amend the application to seek registration on the Supplemental Register.

In order to preserve its rights on appeal, applicant has also filed a Notice of Appeal. A copy of the Notice of Appeal is attached. Applicant requests, however, that the appeal be suspended pending resolution of applicant's Request for Reconsideration.

Should there be any questions regarding applicant's proposed Amendment, the Trademark

1 Examiner or the Trademark Trial and Appeal Board is asked to contact the undersigned attorney
2 directly.

3
4 Respectfully submitted,

5 CHRISTENSEN O'CONNOR
6 JOHNSON KINDNESS^{PLLC}

7 *Faye L. Tomlinson*

8 Faye L. Tomlinson
9 Direct Dial No. 206.695.1717

10
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12 class mail with postage thereon fully prepaid and addressed to the Commissioner for Trademarks, 2900 Crystal Drive,
13 Arlington, VA 22202-3513, on the below date.

14 Date:

15 *May 9, 2002*

16 *Patricia Dubble*

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COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: ProCyte Corporation

Attorney Docket No. PRO22344

Serial No.: 76/076,117

Trademark Attorney: Barney Charlton

Filed: June 23, 2000

Law Office: 105

Mark: VITAL COPPER

AMENDMENT TO ALLEGE USE UNDER 37 C.F.R. § 2.76.
WITH DECLARATION - ALL GOODS

TO THE COMMISSIONER FOR TRADEMARKS:

Applicant requests registration of the above-identified mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, et seq., as amended). Applicant is using the mark in commerce on or in connection with all of the goods identified in the application and reproduced below:

medicated skin care preparations, namely moisturizers, creams, lotions, solutions, sprays, ointments and gels.

A facsimile showing the mark as used in commerce is submitted with this amendment.

Date of first use of the mark anywhere: at least as early as October 24, 2000.

Date of first use of the mark in commerce which the U.S. Congress may regulate: at least as early as December 18, 2000.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, declares that she is properly authorized to execute this Amendment to Allege Use on behalf of the applicant; she believes the applicant to be the owner of the mark sought to be registered; the mark is now in use in

1 commerce; and all statements made herein of her own knowledge are true and that all statements
2 made on information and belief are believed to be true.

3 PROCYTE CORPORATION

4
5 Date: 5/8/02

(Signature)

Robin Carmichael

Robin Carmichael

Title: Vice President of Marketing

1 Applicant: ProCye Corporation
2 Application Serial No. 76/076,117
3 Filed: June 23, 2000
4 Mark: VITAL COPPER
5 Attorney Docket No. PRCO223444
6

COPY

Facsimile showing mark as currently used - submitted with Amendment to Allege Use:

Vital Copper™
Eye Rescue Crème

Net Weight .5 oz

Ingredients: Purified Water, Cyclomethicone, Dimethicone, Polyacrylamide, Prezotide Copper Acetate, Retinyl Palmitate, Cholecalciferol, Tocopheryl Acetate, Tocopherol, Tridecyl Stearate, Polysorbate 20, Neopentyl Glycol, Dicaprylate/Dicaprate, Tridecyl Trimellitate, C13-14 Isoparaffin, Laureth-7, Isopropylparaben, Isobutylparaben, Butylparaben, Propylene Glycol, Diazolidinyl Urea, Methylparaben, Propylparaben.

Manufactured for ProCye Corporation, Redmond, WA 98052 Made in USA

BOX RESPONSES - NO FEE

Trademark Law Office: 105

Serial No.: 76/076,117

Mark: VITAL COPPER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: ProCyte Corporation

Attorney Docket No. PRCO223444

Serial No.: 76/076,117

Examining Attorney: Barney Charlon

Filed: June 23, 2000

Law Office: 105

Mark: VITAL COPPER

International Class: 5

TRANSMITTAL LETTER

TO THE COMMISSIONER FOR TRADEMARKS:

Attached is a Declaration of Faye L. Tomlinson, an attorney with the firm of Christensen O'Connor Johnson Kindness^{PLLC}, attorneys of record for the above-identified application, stating the facts surrounding the prior filing of a Request for Reconsideration.

Applicant respectfully requests that, based on the attached Declaration of Faye L. Tomlinson, the Request for Reconsideration be entered in the file and the Examining Attorney reconsider the application in light of the Amendment to Allege Use that has been accepted in this application.

Should there be any questions regarding the application, the Examining Attorney is invited to contact the undersigned attorney directly.

Respectfully submitted,

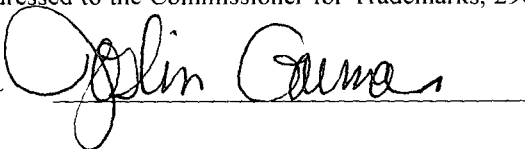
**CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}**



Faye L. Tomlinson
Direct Dial No. 206.695.1717

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on the below date.

Date:
FLT:GLS

November 26, 2002 

LAW OFFICES OF
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